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APPLICATION NO. .	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,773	10/22/2003	Guilhem Rousselet	LOREAL 3.0-036	6962

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LERNER, DAVID, LITTENBERG,
KRUMHOLZ & MENTLIK
600 SOUTH AVENUE WEST
WESTFIELD, NJ 07090

EXAMINER

RUNNING, RACHEL A

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 11/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/690,773

Applicant(s)

ROUSSELET, GUILHEM

Examiner

Rachel A. Running

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>4/5/2004</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 14 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. In line 2 of claim 14, "said first and second open ends" lacks a prior antecedent.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 6-12, 17-23, and 25-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Poupitch (U.S. Patent No. 3,924,738). Poupitch discloses a device comprising a first element (18) and second element (18) detachably securable to a first item (20) and a second item (20). The first and second elements are adapted for flexibly squeezing the first and second item see Figure 3 (column 2, lines 63-70). Also a connecting element (28) is attached to the first and second element, wherein the first item remains in a fixed relation to the second item and the first and second elements are adapted for being connected to the first item and the second item simultaneously

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see Figure 3 (column 3, lines 30-35). Regarding claims 6 and 17, the connecting element is a film hinge (column 3, lines 30-35). Regarding claims 7 and 18, the connecting element is a flexible strip (column 4, lines 15-25). Regarding claims 8 and 19, the device is comprised of at least one moldable thermoplastic material (column 2, lines 63-65). Regarding claims 9 and 20, the device is configured such that it can move from an initial position in which the first and second elements are located side-by-side to a second position in which the first and second elements are located above one another see Figure 1-3. Regarding claim 10, the first and second elements have an internal circular cross-section see Figure 1. Regarding claim 11, the first and second elements are identical see Figure 1. Regarding claim 21, the first and second elements have internal cross-sections that correspond to the cross-sections of the first and second items see Figure 4 (column 2, lines 65-70). Regarding claim 22, the cross-sections of the first and second items and the internal cross-sections of the first and second elements are circular and have a radius see Figure 4. Regarding claim 23, at least one of the internal cross-sections of the first and second elements has a radius that is less than or equal to the radius of the cross-section of the first and second items see Figure 4 (column 2, lines 65-70). Regarding claim 25, the first and second elements are identical see Figure 1. Regarding claim 26, the first and second items are in the form of a receptacle and contain a product see Figure 4. Regarding claim 27, the first and second items have a cross-section that is at least partly circular see Figure 4.

6. Claims 1-5, 7-8, 10-19, 21-23, and 25-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Margo (U.S. Patent No. 6,298,525). Margo discloses a device

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comprising a first element (12) and second element (12) detachably securable to a first item (21) and a second item (21). The first and second elements are adapted for flexibly squeezing the first and second item see Figure 4 (column 2, lines 60-70). Also a connecting element (14) that is attached to the first and second element, wherein the first item remains in a fixed relation to the second item and the first and second elements are adapted for being connected to the first item and the second item simultaneously see Figure 4. Regarding claims 2 and 13, the first and second element includes an open end (13) having a first length, wherein the open ends are flexible so as to receive the first and second items see Figure 4 (column 3, lines 10-20). Regarding claims 3 and 14, the first and second open ends include a pair of deformable arms see Figure 1 (column 3, lines 20-25). Regarding claims 4 and 15, the pair of deformable arms form a portion of a circle extending equal to or more than 180 degrees from one another as measured from the connecting element see Figure 1. Regarding claims 5 and 16, the pair of deformable arms form a portion of a circle extending between 190-310 degrees from one another as measured from the connecting element see Figure 1 (column 4, lines 15-20). Regarding claims 7 and 18, the connecting element is a flexible strip (column 3, lines 50-55). Regarding claims 8 and 19, the device is comprised of at least one moldable thermoplastic material (column 4, lines 35-40). Regarding claim 10, the first and second elements have an internal circular cross-section see Figure 4. Regarding claim 11, the first and second elements are identical see Figure 1. Regarding claim 21, the first and second elements have internal cross-sections that correspond to the cross-sections of the first and second items see Figure 4

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(column 4, lines 15-20). Regarding claim 22, the cross-sections of the first and second items and the internal cross-sections of the first and second elements are circular and have a radius see Figure 4. Regarding claim 23, at least one of the internal cross-sections of the first and second elements has a radius that is less than or equal to the radius of the cross-section of the first and second items see Figure 4 (column 4, lines 15-20). Regarding claim 25, the first and second elements are identical see Figure 1. Regarding claim 26, the first and second items are in the form of a receptacle and contain a product see Figure 4 (column 2, lines 60-65). Regarding claim 27, the first and second items have a cross-section that is at least partly circular see Figure 4.

7. Claims 1, 8, 10-12, 19, 21-23, and 25-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Finocchiaro et al. (U.S. Patent No. 6,371,131). Finocchiaro et al. discloses a device comprising a first element (30) and second element (32) detachably securable to a first item (192) and a second item (192). The first and second elements are adapted for flexibly squeezing the first and second item see Figures 2 and 18. Also a connecting element (28) is attached to the first and second element, wherein the first item remains in a fixed relation to the second item and the first and second elements are adapted for being connected to the first item and the second item simultaneously. Regarding claims 8 and 19, the device is comprised of at least one moldable thermoplastic material (column 4, lines 55-60). Regarding claim 10, the first and second elements have an internal circular cross-section see Figure 2. Regarding claims 11 and 25, the first and second elements are identical see Figure 2 (column 3, lines 1-5). Regarding claim 21, the first and second elements have internal cross-sections that

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correspond to the cross-sections of the first and second items see Figure 18.

Regarding claim 22, the cross-sections of the first and second items and the internal cross-sections of the first and second elements are circular and have a radius see Figure 18 (column 3, lines 27-30). Regarding claim 23, at least one of the internal cross-sections of the first and second elements has a radius that is less than or equal to the radius of the cross-section of the first and second items see Figure 18 (column 3, lines 1-5). Regarding claim 26, the first and second items are in the form of a receptacle and contain a product see Figure 18 (column 3, lines 20-30). Regarding claim 27, the first and second items have a cross-section that is at least partly circular see Figure 18 (column 3, lines 27-30). Regarding claim 28, the first product is a make-up for the lips or eyelashes and the second product is a product that modifies the appearance of the first product (column 3, lines 22-30).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Margo. Margo discloses the claimed invention except for the internal cross-sections of the first or second elements having a radius that is between 1 and 10 percent less than the radius of the cross-sections of the first and second item. It would have been obvious to

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one having ordinary skill in the art at the time the invention was made to have the radius of the internal cross-sections of the first or second elements between 1 and 10 percent less than the radius of the cross-sections of the first and second item, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

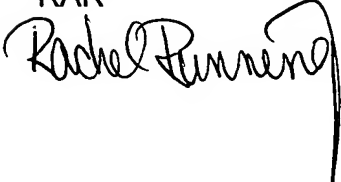
Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rachel A. Running whose telephone number is (571) 272-1917. The examiner can normally be reached on Monday-Friday 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RAR



Todd E. Manahan
Primary Examiner